

FEDERAL ELECTION COMMISSION

**999 E Street, NW
Washington, DC 20463**

2015 JUL 22 PM 3:46

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6886

DATE COMPLAINT FILED: October 22, 2014

DATES OF NOTIFICATION: October 24, 2014

November 12, 2014

LAST RESPONSE RECEIVED: December 3, 2014

DATE ACTIVATED: June 5, 2015

EXPIRATION OF SOL: September 5, 2019

ELECTION CYCLE: 2014

COMPLAINANT:

Carson Dee Adcock

RESPONDENTS:

Citizens for Boyle and Lindsay Angerholzer in
her official capacity as treasurer¹

Brendan Boyle

The Commonwealth of Pennsylvania

RELEVANT STATUTES
AND REGULATION:

52 U.S.C. § 30101(8)(A)(i)²

52 U.S.C. § 30104(b)

11 C.F.R. § 100.52(d)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Brendan Boyle, the Democratic candidate in the 2014 general election in Pennsylvania's 13th Congressional District and a then-sitting state legislator, and his principal campaign committee, Citizens for Boyle (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using Boyle's state

¹ Angerholzer was named the Committee's new treasurer in an amended Statement of Organization filed on March 6, 2015.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 legislative e-mail list to send e-mails to voters concerning Boyle's congressional campaign. The
2 Committee's sworn response identifies the source of the list it used as an open distribution list
3 containing hundreds of e-mail addresses. Accordingly, we recommend that the Commission find
4 no reason to believe that Respondents violated the Act.

5 II. ANALYSIS

6 The Complaint alleges that the Committee used Boyle's state legislative office e-mail list
7 because two constituents who subscribed to Boyle's state legislative office e-mail list, but not to
8 that of his congressional campaign, received campaign e-mails at a shared e-mail address.³ The
9 Complaint also states that the Committee's FEC reports do not disclose any payment for or the
10 receipt of such a list. If the allegation is true, the Committee may have accepted and failed to
11 report an in-kind contribution.⁴ If the value of any such list exceeded the \$2,600 per election
12 contribution limit, the Commonwealth of Pennsylvania could be liable for making, and Boyle
13 and the Committee for accepting, an excessive in-kind contribution.⁵

14 In a sworn affidavit, the Committee's campaign manager states that the constituents'
15 shared e-mail address was obtained from a municipal environmental center e-mail announcing

³ Compl. at 1 and attached e-mails.

⁴ A contribution includes "anything of value" made by any person for the purpose of influencing a federal election." 52 U.S.C. § 30101(8)(A)(i). "Anything of value" includes in-kind contributions, such as the provision of goods or services, like membership and mailing lists, without charge. 11 C.F.R. § 100.52(d). A candidate's authorized committee must disclose the total of all contributions received from persons and political committees and itemize any contributions exceeding \$200 in the election cycle. 52 U.S.C. § 30104(b).

⁵ See *id.* § 30116(a)(1)(A) (limiting contributions by any person to a candidate and his or her authorized political committee to \$2,600 per election in 2014); *id.* § 30116(f) (prohibiting a candidate or political committee from knowingly accepting a contribution in excess of the Act's limitations). The Commission considers a State government to be a person subject to the Act's contribution provisions. See, e.g., Advisory Op. 2000-05 at 2 n.3 (Oneida Nation of New York) (noting that although past advisory opinions have not addressed whether Indian tribes are a government entity, "the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions."); Factual & Legal Analysis at 4-5, MUR 3986 (Commonwealth of Virginia) (concluding that the underpayment by Wilder for President Committee to the Commonwealth for the governor's use of state planes and telephones for his federal campaign constitutes an excessive in-kind contribution from the Commonwealth to the Committee).

1 upcoming programs and sent to an open distribution list containing 11 pages of e-mail
2 addresses.⁶ A campaign volunteer who received the e-mail forwarded it to the campaign
3 manager requesting that the e-mail addresses be added to the campaign's e-mail list.⁷ The
4 campaign manager later replied that the task was completed that day, a week before the
5 Committee e-mailed the first of its solicitations to the constituents.⁸ The affidavit attaches a
6 copy of the environmental center e-mail, which confirms it was sent to hundreds of e-mail
7 addresses, including those of the relevant constituents and of the Committee volunteer.⁹

8 Counsel for the chair and ranking member of the Pennsylvania House of Representatives'
9 Bipartisan Management Committee each responded separately to the Complaint.¹⁰ Both
10 Responses deny knowledge of the alleged conduct and each discusses the steps taken by the
11 Commonwealth of Pennsylvania to prevent the use of state government resources for campaign
12 purposes.¹¹

13 The Committee's sworn Response provides a sufficient basis to demonstrate that it used a
14 source other than Boyle's state legislative e-mail list to send the e-mails at issue in the
15 Complaint. Accordingly, we recommend that the Commission find no reason to believe that
16 Citizens for Boyle and Lindsay Angerholzer in her official capacity as treasurer failed to report

⁶ Citizens for Boyle Resp., Affidavit of Scott Heppard ¶ 3.

⁷ *Id.* Heppard identifies the volunteer as Seth Kaplan.

⁸ *Id.* ¶¶ 3, 4.

⁹ *Id.*, Ex. A.

¹⁰ See Smith Resp. (Nov. 24, 2014); Dermody Resp. (Dec. 2, 2014). CELA initially notified the Secretary of the Commonwealth of Pennsylvania, Department of State, of the Complaint on October 24, 2014. Counsel for the Pennsylvania Department of State advised CELA that neither the Secretary of the Commonwealth nor the Department of State had jurisdiction over a state legislator's possible violation of the Act or the alleged improper use of state resources. CELA then notified Smith and Dermody in their capacities as chair and Democratic leader, respectively, of the House Bipartisan Management Committee.

¹¹ See generally Smith Resp. at 1-4; Dermody Resp. at 2.

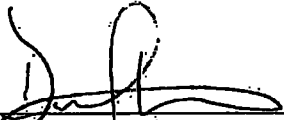
an in-kind contribution. We further recommend that the Commission find no reason to believe
Brendan Boyle or the Commonwealth of Pennsylvania violated the Act.

III. RECOMMENDATIONS


1. Find no reason to believe that Citizens for Boyle and Lindsay Angerholzer in her official capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to report an in-kind contribution.
2. Find no reason to believe that Brendan Boyle or the Commonwealth of Pennsylvania violated the Act.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.
5. Close the file.

Date

7/22/15


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